IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2006

CORAM

THE HON'BLE MR. JUSTICE P.JYOTHIMANI

W.P.No.25357 of 2006
and M.P.No.1 of 2006

L.Ranganathan ... Petitioner

Vs.

The Deputy Registrar of Co-operative Societies,
Salem Circle,
Salem District.
... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, Certiorari direction to call for the Records of the Respondent pertaining to the impugned proceedings in Na.Ka.No.875 of 2005 PACB (1), dated 28.02.2006 and quash the same in so far as the petitioner is concerned.

For Petitioner : Mr. K.Raja
For Respondent : Mr.A.Edwin Prabhakar
Government Advocate

O R D E R

This writ petition is filed challenging the order of the respondent dated 28.02.2006 under which the respondent by invoking the powers under Section 87 of the Tamil Nadu Cooperative Societies Act has issued a show cause notice to the petitioner initiating surcharge proceedings based on the report of the enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act.

2. The writ petition is filed mainly on the ground that a copy of the enquiry report prepared by the Enquiry Officer based on the enquiry conducted on 07.11.2005, has not been served on the petitioner.

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3. When the matter came up for admission this court has directed Mr.A.Edwin Prabakar, learned Government Advocate to take notice on behalf of the respondent and also directed not pass any final order based on the impugned showcause notice. Today Mr.Shankaran, learned Special Government Pleader, takes notice on behalf of the respondent would submit that factually it is true that the copy of the enquiry report has not been furnished on the petitioner. He would also admit the legal position in this regard that when the enquiry conducted under Section 81 of the Tamil Nadu Cooperative Societies Act, a copy the report has not served to the petitioner, the surcharge proceedings initiated under Section 87 of the said Act are not valid in law. A reliance is placed by the learned counsel for the petitioner of this court reported in 1999 (3) MLJ 310 in M.Sambandam Vs. The Deputy Registrar(Credit) Cooperative Societies, Mylapore and others.

4. While referring to the provisions of Tamil Nadu Cooperative Societies Act, 1961 (Previous Act) this court has held that in the absence of serving the copy of the enquiry report, the surcharge proceedings initiated under Section 71 of the earlier Act is not sustainable and it is violation of the principle of statutory provisions and also natural justice.

5. While dealing with the said legal position this court has directed the same in paragraph 9 which reads as follows:

> "9. Coming to the next aspect, it is stated that except the show-cause notice the petitioner was not provided with the claim made by the first respondent and the report of the enquiry officer. In this regard, it is relevant to mentioned that if any surcharge proceeding is initiated under Sec.71 of the Act the same has to be done in accordance with the said provision. The second proviso of Sec.71(1) makes it clear that,
>
> > "No order shall be passed against any person referred to in this sub-section unless the person concerned has been given an opportunity of making his representations."
>
> The said provision makes it clear that if any proceeding is initiated under Sect.71, before passing final order, the person concerned must be given an opportunity to put forth his claim. In our case, even though an enquiry was conducted under Sec.65 of the Act, at the instance of the Registrar of

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Co-operative Societies the copy of the said enquiry report has not been furnished to the petitioner. The said position is clear even from the order of the third respondent. In the light of second proviso to Sec.71(1) in the absence of proof for furnishing copy of the enquiry report further action taken by the first respondent, in pursuance of the enquiry report cannot be sustained on the principles of violation of statutory provision as well as natural justice. Accordingly, I sustain the contention made by the learned counsel appearing for the petitioner."

6. The said legal position reveals that without serving copy of the enquiry report, the surcharge proceedings cannot be initiated. It is also admitted by the learned Special Government Pleader appearing for the respondent.

7. In the present case, admittedly the copy of the enquiry report has not been served on the petitioner before initiating the impugned surcharge proceedings under Section 87 of the said Act.

8. In view of the same, the writ petition stands allowed the impugned showcause notice issued by the respondent dated 28.02.2006 is quashed, however, giving liberty to the respondent to furnish the copy of the enquiry report to the petitioner and then proceed in accordance with law.

The writ petition stands allowed with the above terms. No Costs. Consequently, connected W.P.M.P.is closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

The Deputy Registrar of Co-operative Societies,
Salem Circle,
Salem District.

+ one cc to Mr. K. Raja, Advocate sr no. 40654

SGL(CO)
NM(27.09.2006)

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